

Anna von Herrmann [SBN 301670]
Law Office of Anna von Herrmann
2443 Fillmore St. #380-7379
San Francisco, CA 94115
415-779-5619
anna@vonherrmannlegal.com

Abenicio Cisneros [SBN 302765]
Law Offices of Abenicio Cisneros
2443 Fillmore St. #380-7379
San Francisco, CA 94115
707-653-0438
acisneros@capublicrecordslaw.com

Attorneys for Petitioners and Plaintiffs
KATHERINE MCNENNY and ADRIAN RISKIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KATHERINE MCNENNY and ADRIAN
RISKIN,

Petitioners and Plaintiffs,

vs.

LOS ANGELES CHINATOWN BUSINESS
COUNCIL, a non-profit corporation,

Respondent and Defendant.

) Case No.: BS174784

) **EX PARTE APPLICATION OF**
) **PETITIONERS KATHERINE MCNENNY**
) **AND ADRIAN RISKIN FOR ORDER**
) **SHORTENING TIME FOR NOTICE AND**
) **MOTION TO COMPEL;**
) **DECLARATION OF ANNA VON**
) **HERRMANN; PROPOSED ORDER**

) Department: 86

) Judge: Hon. Mitchell L. Beckloff

) Petition Filed: August 15, 2018

) Date for Hearing on Petition: July 24, 2019

) TELEPHONE APPEARANCE

PETITIONERS KATHERINE MCNENNY and ADRIAN RISKIN, through their counsel, hereby
apply *ex parte* for an order shortening time for notice and motion of hearing on Petitioners' motion
to compel responses to Form Interrogatories, Special Interrogatories, Requests for Production of
Documents and Things, and to deem matters specified in Requests for Admission admitted.

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **THE COURT IS AUTHORIZED TO SHORTEN TIME FOR NOTICE AND HEARING OF THE**
3 **PROPOSED MOTION**

4 Code Civ. Proc. § 1005 prescribes the times for written notice of motions and for the service
5 and filing of supporting and opposing papers. However, Code Civ. Proc. § 1005(b) provides that
6 “[t]he court, or a judge thereof, may prescribe a shorter time” than otherwise prescribed in § 1005.

7 California Rules of Court, rule 3.1300(b) states: “The court, on its own motion or on
8 application for an order shortening time supported by a declaration showing good cause, may
9 prescribe shorter times for the filing and service of papers than the time specified in Code of Civil
10 Procedure section 1005.”

11 As stated in the Declaration of Anna von Herrmann submitted herewith, good cause exists to
12 shorten time for the hearing of Petitioner’s Motion to Compel in that the earliest available date for a
13 regular noticed motion is not until July of 2019. That is the same month as the hearing on the merits
14 in this case and nearly two months after the deadline for Petitioners’ opening brief in the matter.

15 **EX PARTE RELIEF IS WARRANTED UNDER THE CIRCUMSTANCES**

16 An applicant must make an affirmative factual showing in a declaration containing
17 competent testimony based on personal knowledge of irreparable harm, immediate danger, or any
18 other statutory basis for granting relief ex parte. California Rules of Court, rule 3.1202(c). As stated
19 in the Declaration of Anna von Herrmann, filed herewith, irreparable harm will result if Petitioners
20 are not able to have a hearing on the motion to compel until July of 2019.

21 **COUNSEL HAS FULLY COMPLIED WITH CALIFORNIA RULES OF COURT, RULES 3.1203**
22 **AND 3.1204**

23 Among other provisions, Cal. Rules of Court, rule 3.1203 provides as follows:
24
25
26
27

1 A party seeking an ex parte order must notify all parties no later than 10:00 a.m. the court day
2 before the ex parte appearance, absent a showing of exceptional circumstances that justify a shorter
3 time for notice. California Rules of Court, rule 3.1203(a).

4 An ex parte application must be accompanied by a declaration regarding notice stating:

5 (1) The notice given, including the date, time, manner, and name of the party informed, the relief
6 sought, any response, and whether opposition is expected and that, within the applicable time under
7 rule 3.1203, the applicant informed the opposing party where and when the application would be
8 made; (2) That the applicant in good faith attempted to inform the opposing party but was unable to
9 do so, specifying the efforts made to inform the opposing party; or (3) That, for reasons specified,
10 the applicant should not be required to inform the opposing party. California Rules of Court, rule
11 3.1204(b).
12

13 As stated in the Declaration of Anna von Herrmann, filed herewith, counsel has duly
14 complied with the notice requirements of California Rules of Court, rule 3.1203(a) and California
15 Rules of Court, rule 3.1204(b).
16

17 CONCLUSION

18 In view of the foregoing facts and authorities, and the matters set forth in the Declaration of
19 Anna von Herrmann filed herewith, Petitioners hereby submit that good cause exists for an *ex parte*
20 Order shortening time for notice and hearing of Petitioners' Motion to Compel/Deem Admitted.
21

22 Dated: April 29, 2019

23 By: 

24 Anna von Herrmann, Esq.
25
26
27

DECLARATION OF ANNA VON HERRMANN

In support of this application, I, Anna von Herrmann, state the following based upon personal knowledge:


1. I am an attorney licensed to practice before all the courts of the State of California. I am a solo practitioner and the sole attorney of the Law Office of Anna von Herrmann. Along with Abenicio Cisneros, a solo practitioner with the Law Offices of Abenicio Cisneros, I am the attorney of record for Petitioners and Plaintiffs Katherine McNenny and Adrian Riskin (“Petitioners”) in this matter. If called as a witness, I would and could competently testify as follows:
2. On January 23, 2019, Petitioners propounded upon Respondent Form Interrogatories, Special Interrogatories, Requests for Production of Documents and Things, and Requests for Admission.
3. On February 20, 2019, having received no response from Respondent to any of the discovery, I mailed a meet and confer letter to Respondent on behalf of Petitioners. In the letter, I reminded Respondent of the February 22, 2019, deadline to respond to the propounded discovery. I expressed my hope that Respondent would properly respond to the propounded discovery so that the issue could be resolved informally without the use of judicial resources. However, I also made clear that Petitioners intended to file a Motion to Compel if Respondent failed to provide responses to the discovery as required by law.
4. Respondent has provided Petitioners with no response to any of the propounded discovery at all. Respondent did not request any extension of its deadline to respond to discovery. Indeed, Petitioners have not received any communication whatsoever from Respondent related to the propounded discovery.

- 1 5. When I attempted to reserve a date on which to have the motion to compel heard, I was
2 informed that the earliest possible date available was in July of 2019. The Hearing on Petition
3 for Writ of Mandate in this matter, which is essentially a trial date, is currently scheduled for
4 July 24, 2019. Petitioners' opening brief on the Petition for Writ of Mandate is due 60 days prior
5 to the hearing. As such, it was necessary for me to bring this application to have the time within
6 which to have a hearing on the motion to compel shortened.
- 7 6. The delay in hearing the motion to compel/deem admitted until July of 2019 would cause a
8 substantial hardship to Petitioners. Petitioners will suffer irreparable harm if they do not get a
9 ruling on their motion until what is essentially the eve of trial and are as such unable to
10 incorporate discovery responses into their briefing on the merits. Even if Petitioners were to
11 receive responses to their discovery requests just before the hearing on the merits of the case,
12 there would be little if any time to review them and no time to make any further motions should
13 the responses be insufficient.
- 14 7. Respondent's has not appeared in this matter despite being properly served with the petition.
15 Respondent has not identified any attorney to represent Respondent and no attorney has
16 contacted Petitioners or their counsel on behalf of Respondent.
- 17 8. I determined that the best phone number to reach Respondent was (213) 680-0243. That is the
18 phone number listed on Respondent's website.
- 19 9. On, April 29, 2019, at approximately 8:00 a.m., I notified Respondent via telephone with the
20 number noted above that Petitioners would present to this Court on May 2, 2019, at 8:30 a.m., in
21 Department 86 at the Stanley Mosk Courthouse, an application for an order shortening time on
22 hearing Petitioner's motion to compel responses to Petitioner's form interrogatories, special
23 interrogatories, and requests for production, and Petitioner's motion to deem admitted.
- 24
25
26
27
28

1 10. Respondent did not answer my telephone call, so I left a voicemail message on Respondent's
2 answering machine. In my message, I also inquired as to whether Respondent intended to
3 oppose the application and provided my telephone number for Respondent to contact with
4 additional information or questions. As of this writing, Respondent has not yet provided any
5 response to this communication.
6

7
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
9 and correct.

10
11 Dated: April 29, 2019

By: 

Anna von Herrmann, Esq.

1
2 KATHERINE MCNENNY and ADRIAN
RISKIN,

3 Petitioners and Plaintiffs,

4 vs.

5 LOS ANGELES CHINATOWN BUSINESS
6 COUNCIL, a non-profit corporation,

7
8 Respondent and Defendant.
9

) Case No.: BS174784

) **[PROPOSED] ORDER**

) Department: 86

) Judge: Hon. Mitchell L. Beckloff

) Petition Filed: August 15, 2018

) Date for Hearing on Petition: July 24, 2019
)
)
)
)

10 GOOD CAUSE APPEARING THEREFOR;
11
12

13 IT IS HEREBY ORDERED that the time for service of Petitioners' Motion to Compel/Deem

14 Admitted is shortened so that service by means of _____ by _____ a.m./p.m. on

15 _____, 2019 is adjudged sufficient notice of the proceedings referenced herein.
16

17 IT IS FURTHER ORDERED that all papers in opposition must be filed in Department 86 of this

18 Court, which is the Department in which such matters will be heard, by _____ a.m./p.m. on _____,
19

20 2019 and served upon all other parties appearing in this action by means of _____ by

21 _____ a.m./p.m. on _____, 2019.
22

23 Proof of service of the motion and this order must be filed in said Department 86 no later than _____

24 a.m./p.m. on _____, 2019.
25
26
27

1 The date of hearing Petitioners' Motion to Compel/Deem Admitted shall be _____, 2019 at
2 _____ a.m./p.m. in Department 86.

3
4 IT IS FURTHER ORDERED:
5
6
7
8

9 Dated: _____
10
11 _____

12 Judge of the Superior Court
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28